IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 299 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABUBHAI HARJIBHAI PATEL - Petitioner(s)
Versus
M/S. POINT PLAST LTD. - Respondent(s)

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Appearance :
MR AR GUPTA for Petitioner(s) : 1,
NOTICE UNSERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 19/02/2007

ORAL JUDGMENT

Present Company Petition has been filed by the petitioner under Section 433(c) and (f) of the Companies Act, 1956 contending inter alia that the respondent Company was engaged in the manufacture of disposable cups and glasses,

however the said company is completely closed from September 2002 and there is no probability of commencement of business of the respondent company. The petitioner claims to be a shareholder and ex-Director of the company. It is submitted that there is no probability of commencement of business of the respondent company and that the respondent company is in dire financial crisis as the entire capital of the company is eroded. It is further submitted that the respondent company owe huge debt to Banks and number of creditors for which the respondent company is not having any liquidated funds and assets to discharge the same. Therefore it is submitted that the respondent Company has become financially insolvent and therefore it would be just and equitable if the respondent company is ordered to be wound up. It is also submitted that the respondent company is required to be wound up inasmuch as the respondent company remains closed since last one year.

2. This Court issued the notice in the present Company Petition and in view of the

averments made in the petition, this Court also passed the order that notice of the respondent company shall be served on the Registered Office of the Company and also through public notice in the newspapers 'Divya Bhaskar' and 'Indian Express' [Ahmedabad] daily newspapers. Accordingly, notice was served and it was also duly published in local newspapers as per the order dated 25.11.2003. Inspite of the public notice there was no appearance on behalf of the respondent company. Accordingly by order dated 5.2.2004 this Court admitted the present Company Petition, however publication of advertisement was deferred for the time being. That thereafter a further order dated 10th February 2006 came to be passed by the learned Single Judge of this Court, to publish the admission in the newspapers in accordance with the rules in Jansatta [Gujarati] and Indian Express [English] both Ahmedabad Editions and the matter was fixed for final hearing on 12th April 2006. It appears that the petition came up again for hearing before the learned Single Judge on 20th April

2006. However, instead of directing winding up of the Company, the learned Single Judge ordered for appointment of Official Liquidator as 'Provisional Liquidator' and the matter was adjourned and accordingly the Official Liquidator attached to this Court was appointed as 'Provisional Liquidator'. It appears that thereafter the Official Liquidator has submitted Report by way of OLR No. 103 of 2006 which could be dealt with on its own merits.

3. So far as the present Company Petition is concerned, inspite of publication of admission in the local newspapers as per the order dated 20th April 2006 nobody has appeared on behalf of the respondent Company. The averments in the company petition are not disputed and thus there is no counter to the averments in the company petition. Considering the averments in the Company Petition that the respondent Company is closed since 2002. Under the circumstances, the provisions of Section 433 of the Act would be attracted and all

the conditions as per Section 433(c) and (f) are complied with. Accordingly, the respondent Company should be ordered to be wound up by this Court.

4. For the reasons as stated above, the company petition is allowed. The respondent company is directed to be wound up. The Provisional Liquidator appointed by this Court is appointed as Official Liquidator to be incharge of the respondent company. The Official Liquidator is hereby directed to take possession of the properties (movable or immovable) of the respondent company along with its Bank Accounts, Cheque Books, Cash, Account Books etc., after preparing the inventories and panchnama. The Official Liquidator shall submit his report within a period of three months. If required, he

can take service of the Official Valuer for the purpose of preparation, possession etc. No costs.

(M.R.SHAH,J.)

rmr.